



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9800]

RIN 1545-BM75

Covered Asset Acquisitions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary Income Tax Regulations under section 901(m) of the Internal Revenue Code (Code) with respect to transactions that generally are treated as asset acquisitions for U.S. income tax purposes and either are treated as stock acquisitions or are disregarded for foreign income tax purposes. These regulations are necessary to provide guidance on applying section 901(m). The text of the temporary regulations also serves in part as the text of the proposed regulations under section 901(m) (REG-129128-14) published in the Proposed Rules section of this issue of the **Federal Register**.

DATES: Effective date: These regulations are effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Applicability dates: For dates of applicability, see §§1.901(m)-1T(b), 1.901(m)-2T(f), 1.901(m)-4T(g), 1.901(m)-5T(i), and 1.901(m)-6T(d).

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Parry, (202) 317-6936 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

I. Section 901(m)

Section 212 of the Education Jobs and Medicaid Assistance Act (EJMAA), enacted on August 10, 2010 (Public Law 111-226), added section 901(m) to the Code. Section 901(m)(1) provides that, in the case of a covered asset acquisition (CAA), the disqualified portion of any foreign income tax determined with respect to the income or gain attributable to relevant foreign assets (RFAs) will not be taken into account in determining the foreign tax credit allowed under section 901(a), and in the case of foreign income tax paid by a section 902 corporation (as defined in section 909(d)(5)), will not be taken into account for purposes of section 902 or 960. Instead, the disqualified portion of any foreign income tax (the disqualified tax amount) is permitted as a deduction. See section 901(m)(6).

Under section 901(m)(2), a CAA is (i) a qualified stock purchase (as defined in section 338(d)(3)) to which section 338(a) applies; (ii) any transaction that is treated as an acquisition of assets for U.S. income tax purposes and as the acquisition of stock of a corporation (or is disregarded) for purposes of a foreign income tax; (iii) any acquisition of an interest in a partnership that has an election in effect under section 754; and (iv) to the extent provided by the Secretary, any other similar transaction.

Section 901(m)(3)(A) provides that the term “disqualified portion” means, with respect to any CAA, for any taxable year, the ratio (expressed as a percentage) of (i) the aggregate basis differences (but not below zero) allocable to such taxable year with respect to all RFAs; divided by (ii) the income on which the foreign income tax

referenced in section 901(m)(1) is determined. If the taxpayer fails to substantiate the income on which the foreign income tax is determined to the satisfaction of the Secretary, such income will be determined by dividing the amount of such foreign income tax by the highest marginal tax rate applicable to the taxpayer's income in the relevant jurisdiction.

Section 901(m)(3)(B)(i) provides the general rule that the basis difference with respect to any RFA will be allocated to taxable years using the applicable cost recovery method for U.S. income tax purposes. Section 901(m)(3)(B)(ii) provides that, except as otherwise provided by the Secretary, if there is a disposition of an RFA, the basis difference allocated to the taxable year of the disposition will be the excess of the basis difference of such asset over the aggregate basis difference of such asset that has been allocated to all prior taxable years. The statute further provides that no basis difference with respect to such asset will be allocated to any taxable year thereafter.

Section 901(m)(3)(C)(i) provides that basis difference means, with respect to any RFA, the excess of (i) the adjusted basis of such asset immediately after the CAA, over (ii) the adjusted basis of such asset immediately before the CAA. If the adjusted basis of an RFA immediately before the CAA exceeds the adjusted basis of the RFA immediately after the CAA (that is, where the adjusted basis of an asset with a built-in loss is reduced in a CAA), such excess is taken into account as a basis difference of a negative amount. See section 901(m)(3)(C)(ii).

Section 901(m)(4) provides that an RFA means, with respect to a CAA, an asset (including goodwill, going concern value, or other intangible) with respect to such

acquisition if income, deduction, gain, or loss attributable to such asset is taken into account in determining the foreign income tax referenced in section 901(m)(1).

Section 901(m)(7) provides that the Secretary may issue regulations or other guidance as is necessary or appropriate to carry out the purposes of section 901(m).

II. Notices 2014-44 and 2014-45

The Department of the Treasury (Treasury Department) and the IRS issued Notice 2014-44 (2014-32 I.R.B 270 (July 21, 2014)) and Notice 2014-45 (2014-34 I.R.B. 388 (July 29, 2014)), announcing the intent to issue regulations addressing the application of section 901(m) to dispositions of RFAs following CAAs and to CAAs described in section 901(m)(2)(C) (regarding section 754 elections).

The notices were issued in response to certain taxpayers engaging in transactions shortly after a CAA with the intention of invoking the application of the statutory disposition rule under section 901(m)(3)(B)(ii) to avoid the purposes of section 901(m). To address these transactions, Notice 2014-44 described the definition of disposition that would be set forth in future regulations, as well as the rules for determining the portion of basis difference that would be taken into account upon a disposition of an RFA (the disposition amount). In addition, Notice 2014-44 described the computation of basis difference and disposition amount with respect to an RFA that is subject to a section 743(b) CAA. Notice 2014-44 also announced that future regulations would provide successor rules for the continued application of section 901(m) after a subsequent transfer of an RFA with remaining basis difference. Notice 2014-44 further provided that future regulations would provide that, if an asset is an RFA with respect to two section 743(b) CAAs involving the same partnership interest,

the RFA will be treated as having no remaining basis difference with respect to the first section 743(b) CAA if the basis difference with respect to the second section 743(b) CAA is determined independently from the first section 743(b) CAA. In this regard, see generally §1.743-1(f) and proposed §1.743-1(f)(2).

Notice 2014-44 provided that the future regulations described therein would apply (i) concerning dispositions, to dispositions occurring on or after July 21, 2014 (the date Notice 2014-44 was issued), (ii) concerning section 743(b) CAAs, to section 743(b) CAAs occurring on or after July 21, 2014, unless a taxpayer consistently applied those provisions to all section 743(b) CAAs occurring on or after January 1, 2011, and (iii) concerning successor rules, to remaining basis difference with respect to an RFA as of July 21, 2014, and any basis difference with respect to an RFA that arises in a CAA occurring on or after July 21, 2014. Notice 2014-45 provided that the future regulations described in Notice 2014-44 also would apply to determine the tax consequences under section 901(m) of an entity classification election made under §301.7701-3 that is filed on or after July 29, 2014 (the date Notice 2014-45 was issued), including whether a disposition results from the election for purposes of section 901(m) and the treatment of any remaining basis difference that results from such an election.

III. Proposed Regulations Under Section 901(m)

Proposed regulations under section 901(m) are being issued at the same time as these temporary regulations. In addition to cross-referencing these temporary regulations, the proposed regulations provide guidance under section 901(m) concerning issues not addressed in the temporary regulations. Consulting the preamble

to the proposed regulations is recommended for a better understanding of how these temporary regulations are intended to work.

Explanation of Provisions

I. Overview

Section 1.901(m)-1T provides definitions that apply for purposes of the temporary regulations. Section 1.901(m)-2T identifies the transactions that are CAAs and the assets that are RFAs with respect to a CAA. Section 1.901(m)-4T provides the general rule for determining basis difference with respect to an RFA under section 901(m)(3)(C), as well as a special rule for determining basis difference with respect to an RFA that arises as a result of an acquisition of an interest in a partnership that has made a section 754 election (section 743(b) CAA). Section 1.901(m)-5T provides rules for taking into account basis difference under the applicable cost recovery method or as a result of a disposition of an RFA. Section 1.901(m)-6T provides successor rules for applying section 901(m) to subsequent transfers of RFAs that have basis difference that has not yet been fully taken into account.

II. Effective/Applicability Dates

The applicability dates of the temporary regulations relate back to the issuance of Notices 2014-44 and 2014-45. Accordingly, the temporary regulations apply to CAAs occurring on or after July 21, 2014, and to CAAs occurring before that date resulting from an entity classification election made under §301.7701-3 that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014 (referred to as the general applicability date). The temporary regulations also apply to CAAs occurring on or after January 1, 2011, and before the general applicability date (the transition period), but

only if the basis difference within the meaning of section 901(m)(3)(C)(i) (statutory basis difference) in one or more RFAs with respect to such a CAA had not been fully taken into account under section 901(m)(3)(B) either as of July 21, 2014, or, in the case of an entity classification election made under §301.7701-3 that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014, prior to the transactions that are deemed to occur under §301.7701-3(g) as a result of the change in classification.

Taxpayers also may choose to consistently apply §1.901(m)-4T(d)(1) (regarding the determination of basis difference in an RFA with respect to a section 743(b) CAA) to all section 743(b) CAAs occurring on or after January 1, 2011.

III. CAAs and RFAs

Section 1.901(m)-2T(b) identifies the transactions that are CAAs under section 901(m)(2)(A) through (C). Section 1.901(m)-2T(c) provides that, with respect to a foreign income tax and a CAA, an RFA is any asset (including goodwill, going concern value, or other intangible) subject to the CAA that is relevant in determining foreign income for purposes of the foreign income tax. An asset is subject to a CAA, if, for example (i) in the case of a qualified stock purchase of a target corporation (as defined in section 338(d)(3)) to which section 338(a) applies, “new” target is treated as purchasing the asset from “old” target; (ii) in the case of a taxable acquisition of a disregarded entity that is treated as an acquisition of stock for foreign income tax purposes, the asset is owned by the disregard entity at that time of the purchase and therefore the buyer is treated as purchasing the asset from the seller; and (iii) in the case of a section 743(b) CAA, the asset is attributable to the partnership interest transferred in the section 743(b) CAA.

Section 1.901(m)-2T(d) provides that the statutory definitions under section 901(m)(2) and 901(m)(4) apply to determine whether a transaction that occurred during the transition period is a CAA and which assets are RFAs with respect to those CAAs, respectively.

IV. Determining Basis Difference with Respect to an RFA

A basis difference is computed separately with respect to each foreign income tax for which an asset is an RFA. Consistent with section 901(m)(3)(C), §1.901(m)-4T(b) provides the general rule that basis difference with respect to an RFA is the U.S. basis in the RFA immediately after the CAA, less the U.S. basis in the RFA immediately before the CAA. If, however, an asset is an RFA with respect to a section 743(b) CAA, §1.901(m)-4T(d) provides that basis difference with respect to the RFA is the resulting basis adjustment under section 743(b) that is allocated to the RFA under section 755.

Section 1.901(m)-2T(e) “resets” the basis difference in an RFA with respect to a CAA that occurred during the transition period by defining basis difference in the RFA as the portion of statutory basis difference that had not been taken into account under section 901(m)(3)(B) either as of July 21, 2014, or, in the case of an entity classification election made under §301.7701-3 that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014, prior to the transactions that are deemed to occur under §301.7701-3(g) as a result of the change in classification. This is the basis difference in the RFA for the period to which the temporary regulations apply.

V. Basis Difference Taken into Account

Section 1.901(m)-5T provides rules for determining the amount of basis difference with respect to an RFA that is taken into account in a given U.S. taxable year

(allocated basis difference). The amount of basis difference taken into account in a U.S. taxable year is used to compute a disqualified tax amount for the U.S. taxable year. Basis difference is taken into account in two ways: under an applicable cost recovery method or as a result of a disposition of the RFA. If an asset is an RFA with respect to more than one foreign income tax, basis difference with respect to each foreign income tax is separately taken into account under §1.901(m)-5T.

A. Determining cost recovery amounts

Consistent with section 901(m)(3)(B)(i), §1.901(m)-5T(b)(2) provides that a cost recovery amount for an RFA is determined by applying an applicable cost recovery method to the basis difference rather than to the U.S. basis of the RFA.

B. Determining disposition amounts

1. Overview

Section 901(m)(3)(B)(ii) provides that, except as otherwise provided by the Secretary, if there is a disposition of an RFA, the basis difference allocated to the U.S. taxable year of the disposition shall be the excess of the basis difference of such RFA over the total amount of such basis difference that has been allocated to all prior U.S. taxable years (unallocated basis difference). This result is appropriate when all the gain or loss from the disposition is recognized for both U.S. and foreign income tax purposes. In other cases, however, a disposition may not be the appropriate time for all of the unallocated basis difference to be taken into account. For example, it may not be appropriate for all of the unallocated basis difference to be taken into account upon a disposition that is fully taxable for U.S. income tax purposes but not for foreign income tax purposes. Accordingly, under the specific authority granted to the Secretary with

respect to dispositions, these temporary regulations provide rules to determine when less than all of the unallocated basis difference is taken into account as a result of a disposition.

2. Definition of disposition

Section 1.901(m)-1T(a)(10) defines a disposition for purposes of section 901(m) as an event that results in gain or loss being recognized with respect to an RFA for purposes of U.S. income tax or foreign income tax, or both. Thus, the definition excludes certain transfers that might otherwise be considered dispositions under the ordinary meaning of that term. For example, an entity classification election by an RFA owner that results in a tax-free deemed liquidation for U.S. income tax purposes but that is disregarded for foreign income tax purposes does not result in a disposition of the RFAs under section 901(m), because no gain or loss is recognized for U.S. or foreign income tax purposes with respect to the distribution of the RFAs in the deemed liquidation. This is the case even though the deemed liquidation might otherwise be considered a “disposition” of assets under other provisions of the Code.

3. Determining a disposition amount

Section 1.901(m)-5T(c)(2) provides rules for determining a disposition amount. If a disposition of an RFA is fully taxable for U.S. and foreign income tax purposes, the disposition amount will be any remaining unallocated basis difference with respect to that RFA. This is because there generally will no longer be a disparity in the U.S. basis and the foreign basis of the RFA.

If a disposition is not fully taxable for both U.S. and foreign income tax purposes, generally there will continue to be a disparity in the U.S. basis and the foreign basis

following the disposition, and it will be appropriate for the RFA to continue to have unallocated basis difference. To the extent that the disparity in the U.S. basis and the foreign basis is reduced as a result of the disposition, however, a portion of the unallocated basis difference (or, in certain cases, all of the unallocated basis difference) should be taken into account. Whether the disposition reduces the basis disparity will depend on whether the basis difference is positive or negative and the jurisdiction in which gain or loss is recognized.

If an RFA has a positive basis difference, a reduction in basis disparity generally will occur upon a disposition of the RFA if (i) a foreign disposition gain is recognized, which generally results in an increase in the foreign basis of the RFA, or (ii) a U.S. disposition loss is recognized, which generally results in a decrease in the U.S. basis of the RFA. Accordingly, if an RFA has a positive basis difference, the disposition amount equals the lesser of (i) any foreign disposition gain plus any U.S. disposition loss (for this purpose, expressed as a positive amount), or (ii) unallocated basis difference. See §1.901(m)-5T(c)(2)(ii)(A).

If an RFA has a negative basis difference, a reduction in basis disparity generally will occur upon a disposition of the RFA if (i) a foreign disposition loss is recognized, which generally results in a decrease in the foreign basis of the RFA, or (ii) a U.S. disposition gain is recognized, which generally results in an increase in the U.S. basis of the RFA. Accordingly, if an RFA has a negative basis difference, the disposition amount equals the greater of (i) any U.S. disposition gain (for this purpose, expressed as a negative amount) plus any foreign disposition loss, or (ii) unallocated basis difference. See §1.901(m)-5T(c)(2)(ii)(B).

For the avoidance of doubt, the determination of whether there is a disposition for U.S. income tax purposes, and the amount of U.S. disposition gain or U.S. disposition loss, is made without regard to whether gain or loss is deferred or disallowed or otherwise not taken into account currently (for example, see section 267, which defers or disallows certain recognized losses, and §1.1502-13, which provides rules for taking into account items of income, gain, deduction, and loss of members of a U.S. consolidated group from intercompany transactions). This principle also applies if foreign law has an equivalent concept whereby gain or loss that is realized and recognized is deferred or disallowed.

If an asset is an RFA by reason of a section 743(b) CAA and subsequently there is a disposition of the RFA, then for purposes of determining the disposition amount, foreign disposition gain or foreign disposition loss means the amount of gain or loss recognized for purposes of a foreign income tax on the disposition of the RFA that is allocable to the partnership interest that was transferred in the section 743(b) CAA. See §1.901(m)-5T(c)(2)(iii). In addition, U.S. disposition gain or U.S. disposition loss means the amount of gain or loss recognized for U.S. income tax purposes on the disposition of the RFA that is allocable to the partnership interest that was transferred in the section 743(b) CAA, taking into account the basis adjustment under section 743(b) that was allocated to the RFA under section 755 in the section 743(b) CAA. See *id.*

VI. Successor Rules for Unallocated Basis Difference

A. General rules

Section 1.901(m)-6T(b) provides that section 901(m) continues to apply to any unallocated basis difference with respect to an RFA after there is a transfer of the RFA

for U.S. income tax purposes (successor transaction), regardless of whether the transfer is a disposition, a CAA, or a non-taxable transaction. A successor transaction does not occur if, as a result of the transfer of an RFA, the entire unallocated basis difference is taken into account because, for example, the transfer results in all realized gain or loss in the RFA being recognized for U.S. and foreign income tax purposes.

Notice 2014-44 stated that the Treasury Department and the IRS are continuing to study whether and to what extent section 901(m) should apply to an asset received in exchange for an RFA in a transaction in which the U.S. basis of the asset is determined by reference to the U.S. basis of the transferred RFA. The Treasury Department and the IRS have determined that an asset should not become an RFA solely because the U.S. basis of that asset is determined by reference to the U.S. basis of an RFA for which the asset is exchanged in a successor transaction. Accordingly, for example, if, in a successor transaction, an RFA owner transfers an RFA to a corporation in a transfer to which section 351 applies, the stock of the transferee corporation received is not an RFA even though the U.S. basis of the stock is determined under section 358 by reference to the U.S. basis of the RFA transferred.

B. Successor transactions that are CAAs

An asset may be an RFA with respect to multiple CAAs if a successor transaction is also a CAA (subsequent CAA). In this case, the subsequent CAA may give rise to additional basis difference. Section 1.901(m)-6T(b)(4)(i) provides generally that the unallocated basis difference with respect to a CAA that occurred prior to the subsequent CAA (referred to in the regulations as a “prior CAA”) will continue to be taken into account under section 901(m) after the subsequent CAA.

Section 1.901(m)-6T(b)(4)(iii) provides an exception to the general rule if an RFA is subject to two section 743(b) CAAs (referred to in the regulations as a “prior section 743(b) CAA” and a “subsequent section 743(b) CAA”). In this case, to the extent the same partnership interest is transferred in the section 743(b) CAAs, the RFA will be treated as having no unallocated basis difference with respect to the prior section 743(b) CAA if basis difference for the subsequent section 743(b) CAA is determined independently from the prior section 743(b) CAA. In this regard, see generally §1.743-1(f) and proposed §1.743-1(f)(2). If the subsequent section 743(b) CAA results from the acquisition of only a portion of the partnership interest acquired in the prior section 743(b) CAA, the transferor must equitably apportion the unallocated basis difference attributable to the prior section 743(b) CAA between the portion of the interest retained and the portion of the interest transferred. With respect to the portion transferred, the RFA will be treated as having no unallocated basis difference attributable to the prior section 743(b) CAA.

VII. Definition of Foreign Income Tax

For purposes of section 901(m), the temporary regulations define “foreign income tax” as any income, war profits, or excess profits tax for which a credit is allowable under section 901 or 903, other than any withholding tax determined on a gross basis as described in section 901(k)(1)(B). The Treasury Department and the IRS have determined that a withholding tax should not be subject to disallowance under section 901(m) because a withholding tax is a gross basis tax that is generally unaffected by changes in asset basis.

Effect on Other Documents

The following publications are obsolete as of **[INSERT DATE OF PUBLICATION
IN THE FEDERAL REGISTER]**:

Notice 2014-44 (2014-32 I.R.B. 270) and Notice 2014-45 (2014-34 I.R.B. 388).

Special Analyses

Certain IRS regulations, including these, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble of the cross-referenced notice of proposed rulemaking published in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of these regulations is Jeffrey L. Parry of the Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Sections 1.901(m)-1T through -8T also issued under 26 U.S.C. 901(m)(7).

Section 1.901(m)-5T also issued under 26 U.S.C. 901(m)(3)(B)(ii). * * *

Par. 2. Section 1.901(m)-1T is added to read as follows:

§1.901(m)-1T Definitions (temporary).

(a) Definitions. For purposes of section 901(m), this section, and §§1.901(m)-2T through 1.901(m)-8T, the following definitions apply:

(1)-(5) [Reserved]

(6) The term basis difference has the meaning provided in §1.901(m)-4T.

(7) The term cost recovery amount has the meaning provided in §1.901(m)-5T(b)(2).

(8) The term covered asset acquisition (or CAA) has the meaning provided in §1.901(m)-2T.

(9) [Reserved]

(10) The term disposition means an event (for example, a sale, abandonment, or mark-to-market event) that results in gain or loss being recognized with respect to an RFA for purposes of U.S. income tax or a foreign income tax, or both.

(11) The term disposition amount has the meaning provided in §1.901(m)-5T(c)(2).

(12) [Reserved]

(13) The term disregarded entity means an entity that is disregarded as an entity separate from its owner, as described in §301.7701-2(c)(2)(i) of this chapter.

(14) The term fiscally transparent entity means an entity, including a Disregarded Entity, that is fiscally transparent under the principles of §1.894-1(d)(3) for purposes of U.S. income tax or a foreign income tax (or both).

(15)-(17) [Reserved].

(18) The term foreign disposition gain means, with respect to a foreign income tax, the amount of gain recognized on a disposition of an RFA in determining Foreign Income, regardless of whether the gain is deferred or otherwise not taken into account currently. Notwithstanding the foregoing, if after a section 743(b) CAA there is a disposition of an asset that is an RFA with respect to that section 743(b) CAA, foreign disposition gain has the meaning provided in §1.901(m)-5T(c)(2)(iii).

(19) The term foreign disposition loss means, with respect to a foreign income tax, the amount of loss recognized on a disposition of an RFA in determining Foreign Income, regardless of whether the loss is deferred or disallowed or otherwise not taken into account currently. Notwithstanding the foregoing, if after a section 743(b) CAA there is a disposition of an asset that is an RFA with respect to that section 743(b) CAA, foreign disposition loss has the meaning provided in §1.901(m)-5T(c)(2)(iii).

(20) The term foreign income means, with respect to a foreign income tax, the taxable income (or loss) reflected on a foreign tax return (as properly amended or adjusted), even if the taxable income (or loss) is reported by an entity that is a fiscally transparent entity for purposes of the foreign income tax. If, however, foreign law imposes tax on the combined income (within the meaning of §1.901-2(f)(3)(ii)) of two or

more Foreign Payors, foreign income means the combined taxable income (or loss) of such Foreign Payors, regardless of whether such income (or loss) is reflected on a single foreign tax return.

(21) The term foreign income tax means an income, war profits, or excess profits tax for which a credit is allowable under section 901 or 903, except that it does not include any withholding tax determined on a gross basis as described in section 901(k)(1)(B).

(22)-(25) [Reserved]

(26) The term prior CAA has the meaning provided in §1.901(m)-6T(b)(2).

(27) The term prior section 743(b) CAA has the meaning provided in §1.901(m)-6T(b)(4)(iii).

(28) The term relevant foreign asset (or RFA) has the meaning provided in §1.901(m)-2T.

(29)-(32) [Reserved]

(33) The term section 338 CAA has the meaning provided in §1.901(m)-2T(b)(1).

(34) The term section 743(b) CAA has the meaning provided in §1.901(m)-2T(b)(3).

(35) [Reserved]

(36) The term subsequent CAA has the meaning provided in §1.901(m)-6T(b)(4)(i).

(37) The term subsequent section 743(b) CAA has the meaning provided in §1.901(m)-6T(b)(4)(iii).

(38) The term successor transaction has the meaning provided in §1.901(m)-6T(b)(2).

(39) [Reserved]

(40) The term unallocated basis difference means, with respect to an RFA and a foreign income tax, the basis difference reduced by the sum of the cost recovery amounts and the disposition amounts that have been computed under §1.901(m)-5T.

(41) The term U.S. basis means the adjusted basis of an asset determined for U.S. income tax purposes.

(42) [Reserved].

(43) The term U.S. disposition gain means the amount of gain recognized for U.S. income tax purposes on a disposition of an RFA, regardless of whether the gain is deferred or otherwise not taken into account currently. Notwithstanding the foregoing, if after a section 743(b) CAA there is a disposition of an asset that is an RFA with respect to that section 743(b) CAA, U.S. disposition gain has the meaning provided in §1.901(m)-5T(c)(2)(iii).

(44) The term U.S. disposition loss means the amount of loss recognized for U.S. income tax purposes on a disposition of an RFA, regardless of whether the loss is deferred or disallowed or otherwise not taken into account currently. Notwithstanding the foregoing, if after a section 743(b) CAA there is a disposition of an asset that is an RFA with respect to that section 743(b) CAA, U.S. disposition loss has the meaning provided in §1.901(m)-5T(c)(2)(iii).

(45) The term U.S. taxable year means a taxable year as defined in section 7701(a)(23).

(b) Effective/applicability date. (1) [Reserved].

(2) Paragraphs (a)(6), (7), (8), (10), (11), (13), (14), (18), (19), (20), (21), (26), (27), (28), (33), (34), (36), (37), (38), (40), (41), (43), (44), and (45) of this section apply to CAAs occurring on or after July 21, 2014, and to CAAs occurring before that date resulting from an entity classification election made under §301.7701-3 that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014. Paragraphs (a)(6), (7), (8), (10), (11), (13), (14), (18), (19), (20), (21), (26), (27), (28), (33), (34), (36), (37), (38), (40), (41), (43), (44), and (45) of this section also apply to CAAs occurring on or after January 1, 2011, and before July 21, 2014, other than CAAs occurring before July 21, 2014, resulting from an entity classification election made under §301.7701-3 that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014, but only if the basis difference (within the meaning of section 901(m)(3)(C)(i)) in one or more RFAs with respect to the CAA had not been fully taken into account under section 901(m)(3)(B) either as of July 21, 2014, or, in the case of an entity classification election made under §301.7701-3 that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014, prior to the transactions that are deemed to occur under §301.7701-3(g) as a result of the change in classification.

(3) [Reserved].

(c) Expiration date. The applicability of this section expires on December 6, 2019.

Par. 3. Section 1.901(m)-2T is added to read as follows:

§1.901(m)-2T Covered asset acquisitions and relevant foreign assets (temporary).

(a) In general. Paragraph (b) of this section sets forth the transactions that are covered asset acquisitions (or CAAs). Paragraph (c) of this section provides rules for identifying assets that are relevant foreign assets (or RFAs) with respect to a CAA. Paragraph (d) of this section provides special rules for identifying CAAs and RFAs with respect to transactions to which paragraphs (b) and (c) of this section do not apply. Paragraph (e) of this section provides examples illustrating the rules of this section. Paragraph (f) of this section provides the effective/applicability date, and paragraph (g) of this section provides the expiration date.

(b) Covered asset acquisitions. Except as provided in paragraph (d) of this section, the transactions set forth in this paragraph (b) are CAAs.

(1) A qualified stock purchase (as defined in section 338(d)(3)) to which section 338(a) applies (section 338 CAA);

(2) Any transaction that is treated as an acquisition of assets for U.S. income tax purposes and as an acquisition of stock of a corporation (or the transaction is disregarded) for foreign income tax purposes;

(3) Any acquisition of an interest in a partnership that has an election in effect under section 754 (section 743(b) CAA);

(4)-(6) [Reserved].

(c) Relevant foreign asset--(1) In general. Except as provided in paragraph (d) of this section, an RFA means, with respect to a foreign income tax and a CAA, any asset (including goodwill, going concern value, or other intangible) subject to the CAA that is relevant in determining foreign income for purposes of the foreign income tax.

(2) RFA status with respect to a foreign income tax [Reserved].

(3) Subsequent RFA status with respect to another foreign income tax

[Reserved].

(d) Identifying covered asset acquisitions and relevant foreign assets to which paragraphs (b) and (c) of this section do not apply. For transactions occurring on or after January 1, 2011, and before July 21, 2014, other than transactions occurring before July 21, 2014, resulting from an entity classification election made under §301.7701-3 of this chapter that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014, the transactions set forth under section 901(m)(2) are CAAs and the assets that are relevant foreign assets with respect to the CAA under section 901(m)(4) are RFAs.

(e) Examples. [Reserved].

(f) Effective/applicability date--(1) Paragraphs (a), (b)(1) through (3), and (c)(1) of this section apply to transactions occurring on or after July 21, 2014, and to transactions occurring before that date resulting from an entity classification election made under §301.7701-3 of this chapter that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014. Paragraph (d) of this section applies to transactions occurring on or after January 1, 2011, and before July 21, 2014, other than transactions occurring before July 21, 2014, resulting from an entity classification election made under §301.7701-3 of this chapter that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014.

(2)-(3) [Reserved]

(g) Expiration date. The applicability of this section expires on December 6, 2019.

Par. 4. Section 1.901(m)-3T is added and reserved to read as follows:

§1.901(m)-3T Disqualified tax amount and aggregate basis difference carryover (temporary). [Reserved].

Par. 5. Section 1.901(m)-4T is added to read as follows:

§1.901(m)-4T Determination of basis difference (temporary).

(a) In general. This section provides rules for determining for each RFA the basis difference that arises as a result of a CAA. A basis difference is computed separately with respect to each foreign income tax for which an asset subject to a CAA is an RFA. Paragraph (b) of this section provides the general rule for determining basis difference that references only U.S. basis in the RFA. Paragraph (c) of this section provides for an election to determine basis difference by reference to foreign basis and sets forth the procedures for making the election. Paragraph (d) of this section provides special rules for determining basis difference in the case of a section 743(b) CAA. Paragraph (e) of this section provides a special rule for determining basis difference in an RFA with respect to a CAA to which paragraphs (b) through (d) of this section do not apply. Paragraph (f) of this section provides examples illustrating the rules of this section. Paragraph (g) of this section provides the effective/applicability date, and paragraph (h) of this section provides the expiration date.

(b) General rule. Except as otherwise provided in paragraphs (c), (d), and (e) of this section, basis difference is the U.S. basis in the RFA immediately after the CAA, less the U.S. basis in the RFA immediately before the CAA. Basis difference is an attribute that attaches to an RFA.

(c) Foreign basis election. [Reserved].

(d) Determination of basis difference in a section 743(b) CAA--(1) In general.

Except as provided in paragraphs (d)(2) and (e) of this section, if there is a section 743(b) CAA, basis difference is the resulting basis adjustment under section 743(b) that is allocated to the RFA under section 755.

(2) Foreign basis election. [Reserved].

(e) Determination of basis difference in an RFA with respect to a CAA with respect to which paragraphs (b), (c), and (d) of this section do not apply. For CAAs occurring on or after January 1, 2011, and before July 21, 2014, other than CAAs occurring before July 21, 2014, resulting from an entity classification election made under §301.7701-3 of this chapter that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014, basis difference in an RFA with respect to the CAA is the amount of any basis difference (within the meaning of section 901(m)(3)(C)(i)) that had not been taken into account under section 901(m)(3)(B) either as of July 21, 2014, or, in the case of an entity classification election made under §301.7701-3 of this chapter that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014, prior to the transactions that are deemed to occur under §301.7701-3(g) as a result of the change in classification.

(f) Examples. [Reserved].

(g) Effective/applicability date. (1) Paragraphs (a), (b), and (d)(1) of this section apply to CAAs occurring on or after July 21, 2014, and to CAAs occurring before that date resulting from an entity classification election made under §301.7701-3 that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014. Paragraph (e) of this section applies to CAAs occurring on or after January 1, 2011, and before July

21, 2014, other than CAAs occurring before July 21, 2014, resulting from an entity classification election made under §301.7701-3 of this chapter that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014. Taxpayers may, however, consistently apply paragraph (d)(1) of this section to all section 743(b) CAAs occurring on or after January 1, 2011. For this purpose, persons that are related (within the meaning of section 267(b) or 707(b)) will be treated as a single taxpayer.

(2)-(3) [Reserved]

(h) Expiration date. The applicability of this section expires on December 6, 2019.

Par. 6. Section 1.901(m)-5T is added to read as follows:

§1.901(m)-5T Basis difference taken into account (temporary).

(a) In general. [Reserved].

(b) Basis difference taken into account under applicable cost recovery method--

(1) In general. [Reserved].

(2) Determining a cost recovery amount--(i) General rule. A cost recovery amount for an RFA is determined by applying the applicable cost recovery method to the basis difference rather than to the U.S. basis.

(ii) U.S. basis subject to multiple cost recovery methods. [Reserved].

(3) Applicable cost recovery method. [Reserved].

(c) Basis difference taken into account as a result of a disposition--(1) In general. [Reserved].

(2) Determining a disposition amount--(i) Disposition is fully taxable for purposes of both U.S. income tax and the foreign income tax. If a disposition of an RFA is fully

taxable (that is, results in all gain or loss, if any, being recognized with respect to the RFA) for purposes of both U.S. income tax and the foreign income tax, the disposition amount is equal to the unallocated basis difference with respect to the RFA.

(ii) Disposition is not fully taxable for purposes of U.S. income tax or the foreign income tax (or both). If the disposition of an RFA is not fully taxable for purposes of both U.S. income tax and the foreign income tax, the disposition amount is determined under this paragraph (c)(2)(ii). See §1.901(m)-6T for rules regarding the continued application of section 901(m) if the RFA has any unallocated basis difference after determining the disposition amount under paragraph (c)(2)(ii)(A) or (B) of this section, as applicable.

(A) Positive basis difference. If the disposition of an RFA is not fully taxable for purposes of both U.S. income tax and the foreign income tax, and the RFA has a positive basis difference, the disposition amount equals the lesser of:

(1) Any foreign disposition gain plus any U.S. disposition loss (for this purpose, expressed as a positive amount), or

(2) Unallocated basis difference with respect to the RFA.

(B) Negative basis difference. If the disposition of an RFA is not fully taxable for purposes of both U.S. income tax and the foreign income tax, and the RFA has a negative basis difference, the disposition amount equals the greater of:

(1) Any U.S. disposition gain (for this purpose, expressed as a negative amount) plus any foreign disposition loss, or

(2) Unallocated basis difference with respect to the RFA.

(iii) Disposition of an RFA after a section 743(b) CAA. If an RFA was subject to a section 743(b) CAA and subsequently there is a disposition of the RFA, then, for purposes of determining the disposition amount, foreign disposition gain or foreign disposition loss are specially defined to mean the amount of gain or loss recognized for purposes of the foreign income tax on the disposition of the RFA that is allocable to the partnership interest that was transferred in the section 743(b) CAA. In addition, U.S. disposition gain or U.S. disposition loss are specially defined to mean the amount of gain or loss recognized for U.S. income tax purposes on the disposition of the RFA that is allocable to the partnership interest that was transferred in the section 743(b) CAA, taking into account the basis adjustment under section 743(b) that was allocated to the RFA under section 755.

(d) General rules for allocating and assigning a cost recovery amount or a disposition amount when the RFA owner (U.S.) is a fiscally transparent entity.

[Reserved].

(e) Special rules for certain section 743(b) CAAs. [Reserved]

(f) Mid-year transactions. [Reserved]

(g) Reverse hybrids. [Reserved]

(h) Examples. [Reserved]

(i) Effective/applicability date. (1) [Reserved]

(2) Paragraphs (b)(2)(i) and (c)(2) of this section apply to CAAs occurring on or after July 21, 2014, and to CAAs occurring before that date resulting from an entity classification election made under §301.7701-3 of this chapter that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014. Paragraphs (b)(2)(i) and

(c)(2) of this section also apply to CAAs occurring on or after January 1, 2011, and before July 21, 2014, other than CAAs occurring before July 21, 2014, resulting from an entity classification election made under §301.7701-3 that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014, but only with respect to basis difference determined under §1.901(m)-4T(e) with respect to the CAA.

(3) [Reserved]

(j) Expiration date. The applicability of this section expires on December 6, 2019.

Par. 7. Section 1.901(m)-6T is added to read as follows:

§1.901(m)-6T Successor rules (temporary).

(a) In general. This section provides successor rules applicable to section 901(m). Paragraph (b) of this section provides rules for the continued application of section 901(m) after an RFA that has unallocated basis difference has been transferred, including special rules applicable to successor transactions that are also CAAs or that involve partnerships. Paragraph (c) of this section provides rules for determining when an aggregate basis difference carryover of a section 901(m) payor either becomes an aggregate basis difference carryover of the section 901(m) payor with respect to another foreign payor or is transferred to another section 901(m) payor. Paragraph (d) of this section provides the effective/applicability date, and paragraph (e) of this section provides the expiration date.

(b) Successor rules for unallocated basis difference--(1) In general. Except as provided in paragraph (b)(4) of this section, section 901(m) continues to apply after a successor transaction to any unallocated basis difference attached to a transferred RFA

until the entire basis difference has been taken into account as a cost recovery amount or a disposition amount (or both) under §1.901(m)-5T.

(2) Definition of a successor transaction. A successor transaction occurs with respect to an RFA if, after a CAA (prior CAA), there is a transfer of the RFA for U.S. income tax purposes and the RFA has unallocated basis difference with respect to the prior CAA, determined immediately after the transfer. A successor transaction may occur regardless of whether the transfer of the RFA is a disposition, a CAA, or a non-taxable transaction for purposes of U.S. income tax. If the RFA was subject to multiple prior CAAs, a separate determination must be made with respect to each prior CAA as to whether the transfer is a successor transaction.

(3) Special considerations. [Reserved].

(4) Successor transaction is a CAA--(i) In general. An asset may be an RFA with respect to multiple CAAs if a successor transaction is also a CAA (subsequent CAA). Except as otherwise provided in this paragraph (b)(4), if there is a subsequent CAA, unallocated basis difference with respect to any prior CAAs will continue to be taken into account under section 901(m) after the subsequent CAA. Furthermore, the subsequent CAA may give rise to additional basis difference subject to section 901(m).

(ii) Foreign basis election. [Reserved].

(iii) Multiple section 743(b) CAAs. If an RFA is subject to two section 743(b) CAAs (prior section 743(b) CAA and subsequent section 743(b) CAA) and the same partnership interest is acquired in both the CAAs, the RFA will be treated as having no unallocated basis difference with respect to the prior section 743(b) CAA if the basis difference for the section 743(b) CAA is determined independently from the prior

section 743(b) CAA. In this regard, see generally §1.743-1(f). If the subsequent section 743(b) CAA results from the acquisition of only a portion of the partnership interest acquired in the prior section 743(b) CAA, then the transferor will be required to equitably apportion the unallocated basis difference attributable to the prior section 743(b) CAA between the portion retained by the transferor and the portion transferred. In this case, with respect to the portion transferred, the RFAs will be treated as having no unallocated basis difference with respect to the prior section 743(b) CAA if basis difference for the subsequent section 743(b) CAA is determined independently from the prior section 743(b) CAA.

(5) Example. The following example illustrates the rules of paragraph (b) of this section.

Example. (i) Facts. USP, a domestic corporation, wholly owns CFC, a foreign corporation organized in Country A and treated as a corporation for both U.S. and Country A tax purposes. FT is an unrelated foreign corporation organized in Country A and treated as a corporation for both U.S. and Country A tax purposes. FT owns one asset, a parcel of land (Asset). Country A imposes a single tax that is a foreign income tax. On January 1, Year 1, CFC acquires all of the stock of FT in exchange for 300u in a qualified stock purchase (as defined in section 338(d)(3)) to which section 338(a) applies (Acquisition). Immediately before the Acquisition, Asset had a U.S. basis of 100u, and immediately after the Acquisition, Asset had a U.S. basis of 300u. Effective on February 1, Year 1, FT elects to be a disregarded entity pursuant to §301.7701-3. As a result of the election, FT is deemed, for U.S. income tax purposes, to distribute Asset to CFC in liquidation (Deemed Liquidation) immediately before the closing of the day before the election is effective pursuant to §301.7701-3(g)(1)(iii) and (3)(ii). The Deemed Liquidation is disregarded for Country A tax purposes. No gain or loss is recognized on the Deemed Liquidation for either U.S. or Country A tax purposes.

(ii) Result. Under §1.901(m)-2T(b)(1), the Acquisition by CFC of the stock of FT is a section 338 CAA. Under §1.901(m)-2T(c)(1), Asset is an RFA with respect to Country A tax and the Acquisition, because immediately after the Acquisition, Asset is relevant in determining foreign income of FT for Country A tax purposes, and FT owned Asset when the Acquisition occurred. Under §1.901(m)-4T(b), the basis difference with respect to Asset is 200u (300u – 100u). Under §1.901(m)-2T(b)(2), the Deemed Liquidation is a CAA (subsequent CAA) because the Deemed Liquidation is treated as an acquisition of assets for U.S. income tax purposes and is disregarded for Country A

tax purposes. Because the U.S. basis in Asset is 300u immediately before and after the Deemed Liquidation, the subsequent CAA does not give rise to any additional basis difference. The Deemed Liquidation is not a disposition under §1.901(m)-1T(a)(10) because it did not result in gain or loss being recognized with respect to Asset for U.S. or Country A tax purposes. Accordingly, no basis difference with respect to Asset is taken into account under §1.901(m)-5T as a result of the Deemed Liquidation, and the unallocated basis difference with respect to Asset immediately after the Deemed Liquidation is 200u (200u – 0u). Under paragraph (b)(2) of this section, the Deemed Liquidation is a successor transaction because there is a transfer of Asset for U.S. income tax purposes from FT to CFC and Asset has unallocated basis difference with respect to the Acquisition immediately after the Deemed Liquidation. Accordingly, under paragraph (b)(1) of this section, section 901(m) will continue to apply to the unallocated basis difference with respect to Asset until the entire 200u basis difference has been taken into account under §1.901(m)-5T.

(c) Successor rules for aggregate basis difference carryover [Reserved].

(d) Effective/applicability date. (1) Paragraphs (a), (b)(1), (b)(2), (b)(4)(i), (b)(4)(iii), and (b)(5) of this section apply to CAAs occurring on or after July 21, 2014, and to CAAs occurring before that date resulting from an entity classification election made under §301.7701-3 of this chapter that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014. Paragraphs (a), (b)(1), (b)(2), (b)(4)(i), (b)(4)(iii), and (b)(5) of this section also apply to CAAs occurring on or after January 1, 2011, and before July 21, 2014, other than CAAs occurring before July 21, 2014, resulting from an entity classification election made under §301.7701-3 that is filed on or after July 29, 2014, and that is effective on or before July 21, 2014, but only with respect to basis difference determined under §1.901(m)-4T(e) with respect to the CAA.

(2)-(3) [Reserved]

(e) Expiration date. The applicability of this section expires on December 6, 2019.

Par. 8. Sections 1.901(m)-7T and 1.901(m)-8T are added and reserved to read as follows:

§1.901(m)-7T De minimis rules. [Reserved].

§1.901(m)-8T Miscellaneous. [Reserved].

John Dalrymple

Deputy Commissioner for Services and Enforcement.

Approved: November 4, 2016.

Mark J. Mazur

Assistant Secretary of the Treasury (Tax Policy).

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